IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 39 OF 2001

Official Liquidator,
High Court of Bombay,
Panaji. ... Applicant

versus

Victor Fernandes,
Siolim, Bardez. ... Respondent

Ms. Amira Razaq, Advocate for the Applicant.

Mr. E. P. Lobo, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 8TH SEPTEMBER,2006.

ORDER

This claim has been filed by the applicant/Official Liquidator for the recovery of a sum of Rs.2,11,989/- from the respondent pursuant to leave granted to the Official Liquidator by Order of this Court dated 16-6-2000. The said claim arises

out of a loan of Rs.70,000/- advanced to the respondent on 15-12-1995 and Rs.5,00,000/- on 27-1-1996 by the Company in Liquidation with interest at the rate of 13% per annum.

2. The case of the respondent, as per affidavit in reply dated 15-6-2001, filed by him is that he had signed various documents at the instance of the Managing Director and the Executive Director of the said Company and save and except his contributions towards the Equity Share Capital and Fixed Deposit he had not obtained any finance from the said Company and moreover he was also given to understand that no Directors can avail any finance facility from the Company without following the procedures required to be followed under the Companies Act, 1956. It was his case that he was appointed as a Director by letter dated 8-2-1996 with retrospective effect from 1-11-1995. The respondent denied having taken any loan much less a loan in the account claimed by the applicant.

3. The following issues were framed by the Court on 2-11-2001:-

(1) Whether the claimant proves that Shri Victor Fernandes had availed of loan of Rs. 5,70,000/- from the company(in liquidation) prior to liquidation?

(2) Whether the claimant proves that the amount of Rs.1,64,037/- plus interest is due and outstanding and payable by Shri Victor Fernandes to the company(in liquidation) as shown in the Statement of Claims?

(3) Whether Respondent proves that he was inducted as Director which was to take retrospective effect from 1/11/1995, and so was communicated to him vide letter dated 8/2/1996?

(4) Whether the Respondent proves that the sum of Rs.4,65,000/- was received by the Bharatiya Development Finance Ltd., from Victor Fernandes towards equity share capital vide receipts bearing No. 0758 dated 20/10/1995, bearing No. 0797 dated 3/11/1995, bearing No. 1052 dated 11/11/1995 and bearing No.1059 dated 13/11/1995?

(5) Whether the Respondent proves that his signatures were obtained on certain blank documents without filling the details therein.

4. The applicant/Official Liquidator in support of his claim examined the Ex-Director Shri Devanand Kudav and

produced several documents in relation to the suit transaction. The respondent examined himself and also produced some documents.

5. Issues Nos.3 and 4:

It has now been submitted on behalf of the respondent, by Mr. E. P. Lobo, the learned Counsel on behalf of the respondent, that the respondent was not a Director of the said Company in Liquidation because he had not signed Form No.32. It appears that the respondent had initially taken the plea that he was appointed as a Director retrospectively with effect from 1-11-1995 with a view to avoid his liability for repayment of the dues of the Company. It also appears that the respondent also attended some of the meetings of the said Company as stated by him, and not only that even after the Company was dissolved, signed as a Director in two letters written by him along with the Managing Director to the Bank of Baroda, the copies of which the respondent produced as Exh.F in support of his statement in para 12 of the affidavit in evidence but in cross-examination again changed his stand and stated that he had signed as a Director at the request of the Bank and yet

again stated that he told the Bank that he was a Director. It appears that initially the plea was taken with a view to avoid his liability to repay the loan/s taken by him but subsequently has changed his plea and now it is stated that he was not a Director because he had not signed Form No.32 and this is presumably with a view to avoid some other consequences. Although a loan by the Company to a Director is prohibited unless certain procedures are followed, as contemplated by the Companies Act, 1956, on behalf of the respondent, no reference has been made to any provision of the said Companies Act, 1956 to show that even if the loan was taken contrary to any of its provisions, the amount due on the said loan could not be recovered from a Director. In other words, there is no prohibition under the Companies Act, 1956 that a loan granted to a Director by a Company without complying the provisions of the Companies Act, 1956 cannot be recovered from such Director. Issue No.3 has therefore no relevance in deciding the controversy. As far as the sum of Rs.4,65,000/- paid by the respondent towards the purchase of shares of the said Company there is no dispute about the same. The said money was paid by the respondent on 13-11-1996 and 16-11-1996 as reflected on the receipt produced

by the respondent at Exh.16. The respondent has admitted that he was not informed whether the said shares were allotted to him. The respondent has also admitted that he was not given the share certificates. On behalf of the Company, the respondent was informed by letter dated 2-4-1997 sent by registered A.D. that his share application money was transferred to his loan account. The respondent has feigned ignorance as regards the receipt of the said letter dated 2-4-1997 at Exh.8 but has stated that the address on the A.D. card in respect of the said letter namely Exh.9 is his. The respondent admitted that Paulina Fernandes is his wife but did not know as to who had signed on the said A.D. card/Exh.9 as P. Fernandes. It was specifically put to him that the signature on the said A.D. card/Exh.9 was that of his wife, a suggestion which the respondent denied. The respondent also admitted that he and his wife were residing together in the same house. The said letter Exh.8 dated 2-4-1997 having been sent to the correct address of the respondent, a presumption of service arose against the respondent which presumption the respondent has failed to rebut. The respondent did not react to the said letter dated 2-4-1997, and, raised an issue about the same for the first time in his affidavit in reply

dated 15-6-2001. Therefore, there is no question of the respondent being entitled for the refund of the said amount which was duly adjusted towards the loan taken by the respondent under intimation to the respondent. This issue also is irrelevant for the purpose of controversy considering that the said amount paid by the respondent towards purchase of the shares of the said Company in Liquidation was already adjusted towards the loan taken by the respondent, under intimation to the respondent.

6. Issue Nos.1, 2 and 5:

AW1/Devanand Kudav has stated that he was the whole time Director of the Company under Liquidation from December, 1995 till the order of liquidation was made. He stated that the respondent had applied for a loan of Rs.5,70,000/- and he produced the loan application dated 15-12-1995 at Exh.2. He stated that the loan was disbursed in two instalments of Rs.70,000/- on 15-12-1995 and Rs.5,00,000/- on 27-1-1996. He produced the debit vouchers for the said payments at Exhs. 3 and 4 which were signed by the respondent as well as the Ex-Director Shri Alberto D'Souza. He further stated that the

respondent had agreed to repay the said loan within six months and had also agreed to pay interest at the rate of 13% per annum to be compounded with quarterly rests. He produced various letters issued to the respondent from time to time calling upon the respondent to repay the said loan. Exh.5 is a letter dated 24-9-1996 written by the Loan Officer and Exh.6 is a letter dated 16-1-1997 written by AW1/Kudav himself. Exh.7 is the A.D. card in respect of the said letter. Exh.8 is a letter dated 2-4-1997 written by the Chairman. Exh.9 is the A.D. of the said letter. Exh.11 dated 31-3-1998 is another letter written by AW1/Kudav calling upon the respondent to pay the amount of Rs.1,54,175/- after deducting the share application money. Exh.12 is another letter. Exh.13 is the extract of the loan account of the respondent produced on behalf of the applicant. On the other hand, the respondent in his affidavit in evidence stated that he remembers that he had signed some papers but he did not have any dealings with the Company. In fact, the respondent himself has produced certain documents which has strengthened the case of the applicant. In cross-examination the respondent admitted his signature on the application for loan-Exh.2 but stated that the writings on the said Exhs. 2, 3 and 4

were not his. The respondent stated that he along with the said Alberto D'Souza had written two letters dated 12-9-2002 addressed to the Manager of Bank of Baroda, requesting him to issue the detailed statement of account of the two cheques in question for the relevant period. When the said statement of account produced by the respondent at Exh.20 was shown to the respondent, the respondent admitted that Rs.70,000/- were withdrawn on 15-12-1995 in his name. The said entry on Exh.20 shows that the said amount was paid to the respondent against Cheque No.35753. In the same breath the respondent stated that he had not withdrawn the said amount of Rs.70,000/-. The respondent also admitted that the entry on 27-1-1996 was towards a Demand Draft in the sum of Rs.5,00,000/- and stated that the name of the person against whose name the said Demand Draft was obtained is not reflected in the said statement-Exh.20. When the respondent was asked as to which documents he had signed in blank, the respondent stated that he did not remember now as to which blank documents he had signed. Again, the respondent admitted that the amount of Rs.70,000/- was drawn on 15-12-1995 by bearer cheque in his name. He denied the suggestion that the Demand Draft of

Rs.5,00,000/- was drawn by the Bank in the name of Smt. Filomena Leitao at his request towards the payment, the respondent was required to make to the said Filomena Leitao. In further cross-examination, the respondent stated that he did not know any Filomena Leitao and he did not have transactions with her but in further cross-examination the respondent was compelled to admit that he and his wife had decided to purchase the property known as "Martachem Manda" situated in Orlim in Salcete from the said Filomena Leitao. Further, the respondent was compelled to admit that his wife had signed an agreement with the said Filomena Leitao and when he was shown the said agreement dated 30-1-1996 and it was put to the respondent that by virtue of the agreement dated 30-1-1996 his wife had paid a sum of Rs.5,00,000/- to the said Filomena Leitao the respondent answered by stating that the said amount was paid but not through the said cheque and further stated that the said Rs.5,00,000/- were paid by his wife by cheque through her account. The respondent was again confronted with the said agreement dated 30-1-1996 and was compelled to admit, which he did, that the said amount of Rs.5,00,000/- was paid by Demand Draft dated 27-1-1996. The debit voucher-Exh.3 shows

that the amount of Rs.70,000/- was paid to the respondent by Cheque No.35753 dated 15-12-1995 and the debit voucher Exh.4 shows that it was paid by Cheque No.35797 dated 27-1-1996. The respondent himself has produced a letter dated 17-9-2002 from Bank of Baroda which shows that the sum of Rs.70,000/- was paid to the respondent on 15-12-1995 in cash by virtue of bearer cheque No.35753 dated 15-12-1995 favouring the respondent. Likewise, the said letter Exh.19 also shows that against the cheque No.35797 dated 27-1-1996 for Rs.5,00,000/- a Demand Draft No.ZD089710 was issued favouring Filomena Tereza Leitao which is reflected in para 2 of the agreement dated 30-1-1996 entered between the wife of the respondent and the said Filomena T. Leitao. The said sums paid to the respondent on 15-12-1995 and 27-1-1996 are seen reflected in the loan account, the extract of which is produced, on behalf of the applicant at Exh.13. On behalf of the respondent, it is submitted by learned Counsel that the applicant has not proved the documents Exh.2/loan application; Exhs.3 and 4 debit vouchers signed by the respondent. Exhs. 3 and 4 are debit vouchers signed by the respondent against a revenue stamp for having received the sum of Rupees mentioned therein i.e.

Rs.70,000/- and Rs.5,00,000/- respectively. The respondent has admitted the execution of the same. A person who signs a stamped receipt, it is difficult to accept that he signed it in blank. The said debit vouchers/receipts have been otherwise independently proved by the applicant's witness Shri Kudav who was one of the Ex-Directors and who has identified the signatures of the Managing Director as well as that of the respondent on the said documents. The said documents were moreover admitted in evidence and marked as Exhibits without any objection of the respondent. Respondents objection therefore cannot now be entertained that the said documents are not proved. A bare statement of the respondent that he had signed the said documents in blank cannot be accepted more so because at the relevant time the respondent had himself claimed to be a Director of the said Company. The said documents are fortified by other documents produced by the respondent himself particularly the letter issued by the Bank of Baroda dated 17-9-2002-Exh.19 and the statement of account-Exh.20. The respondent in the course of his cross-examination has proved himself to be a very unreliable witness. On the basis of the evidence of the applicant and the documents produced by the

applicant as well as by the respondent, referred to hereinabove I have no hesitation to hold the claim of the applicant as proved in that the respondent was advanced the said sums of Rs.70,000/- and Rs.5,00,000/- on 15-12-1995 and 27-1-1996 respectively which the respondent failed and neglected to repay to the Company under Liquidation as a result of which the said Company was compelled to even adjust the amount which the respondent had paid towards the purchase of shares of the said Company and thereafter call upon the respondent to pay a sum of Rs.1,54,175/- as seen from letter dated 31-3-1991/Exh.11. The fixed deposits which the respondent had with the Company in Liquidation have also been adjusted. Issues Nos. 1 and 2 are held as proved and Issue No.5 as disproved.

7. The applicant's witness has stated that the said loan was to be repaid within six months with interest at the rate of 13% per annum to be compounded with quarterly rests. Although no rate of interest was mentioned on the application for loan the applicant has not contested the said statement. Hence, the applicant would be entitled to claim interest from the respondent at the rate of 13% with quarterly rests. In view of

the above, the claim is bound to succeed. The respondent is hereby directed to pay to the applicant/Official Liquidator the sum of Rs.2,11,989/- with pending interest at the rate of 13% with quarterly rests and future rate at the rate of 6% until payment, with costs which are quantified at Rs.10,000/-.

N. A. BRITTO, J.

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